AN AGENT'S AUTHORITY BY NECESSITY. — In 8 HARVARD LAW REVIEW, 496, a note occurs on the subject of an agent's authority by necessity, based on the case of *Gwilliam* v. *Twist*, 11 *The Times*, L. R. 205. This case has subsequently been reversed, but on grounds which in no wise impugn the propositions of law laid down in the lower court, the *ratio decidendi* being that the facts of the particular case did not raise the question of necessity at all. See *Gwilliam* v. *Twist*, 11 *The Times*, L. R. 415.

THE INCONSISTENCIES OF THE LAW OF GIFTS. — The May-June number of the American Law Review, has an interesting article by C. B. Labatt, Esq , of the New York bar, on the inconsistencies of the law of gifts. The writer deplores the wide difference between the present rule at common law which makes delivery or a deed essential, in a gift of the legal title, and the rule of equity which makes a gratuitous declaration of trust sufficient, in a gift of the equitable interest. He suggests that this rule of equity may have had its origin in an enactment of Justinian, and is of opinion that its utter inconsistency with the rule at common law is to be explained only by the peculiar historical position of the Court of Chancery.

One is rather puzzled at this because it omits all mention of the case of *Ex parte Pye* (18 Ves. 140), and seems to assume that the present rule regarding declarations of trust is as old as the Court of Chancery itself. But surely the rule before the decision in *Ex parte Pye* was, and for three centuries had been, against the validity of a gratuitous declaration of trust. In Doctor and Student, in the first part of the sixteenth century, it was taken for law that while a man could, for no consideration, transfer his equitable interest in property of which another was trustee, he could not, without consideration, grant an equitable interest in his own property, by declaring himself a trustee. In the one case the transaction between donee and donor was complete. The donee asked the aid of equity, not against the donor, but against the trustee, and as the trustee had received something, equity compelled him to account for it. In the other, the donee asked the aid of equity to complete the promised gift of the donor. The donor had received nothing, and equity declined to interfere. (Doctor and Student, Dialogue II., chap. 22, 23.) The rule was perfectly consistent, and at the beginning of the nineteenth century was still taken to be good sense and good law. *Sloane* v. *Cadogan* (Sugden, 3 Vend. & Pur., 10th ed., App. 66). Three years after this case, in 1811, Lord Eldon, the most conservative of Chancellors, made, in *Ex parte Pye*, the famous decision which first gave effect to gratuitous declarations of trust, and involved the law in its present inconsistencies. Thus the difficulty in the law of gifts, so far as the rules of equity are responsible for it, is not yet one hundred years old.

Mr. Labatt thinks it improbable that in these rationalizing days, this branch of law can remain unchanged, and he predicts that the change, when made, will be a compromise, which, while "prohibiting merely informal gifts," will mitigate the "stern and unbending rule of the common law by permitting certain evidential facts to stand as an adequate substitute for delivery." Perhaps a simpler remedy — if it is necessary to have a remedy — would be to abolish by statute the doctrine of *Ex parte Pye*. That would restore the doctrine of equity to its former satisfactory condition, put an end to the inconsistency of which Mr. Labatt

complains, and leave untouched the rule at common law which after the half-century of conflict (if one may borrow the expression) following *Irons* v. *Smallpiece* (3 B. & Ald. 551) is, there is reason to hope, at last settled.

THE VALUE OF HONEST INTENTIONS. In *Nash* v. *Minnesota Title & Insurance Co.* (40 N. E. R. 1039), an action of deceit, a majority of the Supreme Judicial Court of Massachusetts decided that a defendant who had written a letter reasonably to be understood as warranting a title, might show that the letter was intended to convey another meaning. In this opinion the majority follows *Derry* v. *Peek*, 14 App. Cas. 337 (noted in 3 HARVARD LAW REVIEW, 231). Field, C. J., and Holmes, J., dissented, arguing, as does Sir Frederick Pollock in 5 Law Quar. Rev. 410, that a man should be bound by a reasonable interpretation of his words when he knows others will act upon them. Though not cited by the Court, a *dictum* in *Litchfield* v. *Hutchinson*, 117 Mass. 195, also appears to support this view.

There seems little doubt that the decision of the majority is right on historical grounds, but whether it is in thorough touch with the trend of the law, is a dubious question. The present tendency certainly seems to be in favor of requiring moral fraud for deceit, on the ground that it is hard to subject the honest giver of gratuitous information to the determination of the jury as to its good sense; yet in the case of a gratuitous bailee more than mere honesty is required, and the two cases are not easily distinguishable. The ground of the decision, therefore, probably lies as much as anywhere in the greater hesitation of the courts to give security to the seeker of information than to the possessor of property rights.

RETREATING TO THE WALL.— *Beard* v. *United States*, 15 Sup. Ct. Rep. 962, is a recent case which has perhaps attracted more attention than its actual decision warrants. The defendant was feloniously assailed and killed his man without "retreating to the wall." The substance of the charge in the court below was that if he could have avoided taking life by getting out of the way, he was guilty of manslaughter. On error, this charge, which takes no account of what may have reasonably appeared necessary to the prisoner at the time of the killing, was very naturally held erroneous by the Supreme Court, and the judgment reversed.

On the facts of the case the decision seems unexceptionable; namely, that when a man is murderously assaulted, he need not pause and speculate as to whether retreat would be safe and expedient, but is entitled to meet the attack with such force as he honestly believes, and has reasonable ground to believe, is necessary to save his life or protect himself from serious injury. It is the *dicta* in Mr. Justice Harlan's opinion, however, which, although quite unnecessary to the decision, have attracted such wide attention. Their general purport is that in case of a *felonious* assault the doctrine of retreating to the wall does not apply. On this point the Court shows a leaning toward the view held by Bishop and Wharton and other dissenters from the old doctrine of the common law. Nevertheless, the earlier view, supported by equal authority, seems more consistent with principle. Resistance to an assault, where life is not involved, may be allowed in kind; but killing to prevent a felony, in this as in other cases, should be justifiable only where no other reasonable